

E-FILED on 3/6/2006

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

VIDEO SOFTWARE DEALERS
ASSOCIATION, and ENTERTAINMENT
SOFTWARE ASSOCIATION,

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, in his
official capacity as Governor of the State of
California; BILL LOCKYER, in his official
capacity as Attorney General of the State of
California; GEORGE KENNEDY, in his
official capacity as Santa Clara County District
Attorney; RICHARD DOYLE, in his official
capacity as City Attorney for the City of San
Jose; and ANN MILLER RAVEL, in her
official capacity as County Counsel for the
County of Santa Clara,

Defendants.

No. C-05-04188 RMW

ORDER DEEMING APPLICATION OF
COMMON SENSE MEDIA TO
PARTICIPATE AS AMICUS CURIAE
SUBMITTED ON THE PAPERS; ORDER
GRANTING COMMON SENSE MEDIA
LEAVE TO FILE AMICUS BRIEF

[Re Docket Nos. 59, 62, 63]

Common Sense Media ("CSM"), self-described as a non-profit organization that seeks to educate the public about the effects of media on children, applies for "leave to participate in this action as amicus curiae." *See* Mot. at 1. The plaintiffs oppose the application. On this court's own

1 motion, CSM's application is deemed submitted on the papers. No oral argument will be held; no
 2 appearance is needed.

3 "The privilege of being heard amicus rests solely within the discretion of the court," and the
 4 privilege may be granted to one whose participation the court feels may be "useful." *In re Roxford*
 5 *Foods Litig.*, 790 F. Supp. 987, 997 (E.D. Cal. 1991). CSM anticipates the plaintiffs will move for
 6 summary judgment. Reply at 2. CSM's application indicates its participation may be useful to the
 7 court in deciding a motion for summary judgment. However, as has been noted by the Seventh
 8 Circuit, "[t]he vast majority of amicus curiae briefs are filed by allies of litigants and duplicate the
 9 arguments made in the litigants' briefs, in effect merely extending the length of the litigant's brief.
 10 Such amicus briefs should not be allowed. They are an abuse." *Ryan v. Commodity Futures*
 11 *Trading Comm'n*, 125 F.3d 1062, 1063 (1997) (Posner, C.J., in chambers). CSM may file an amicus
 12 brief in connection with any motion for summary judgment by the plaintiffs, but CSM should work
 13 with the defendants to insure that its brief does not repeat the arguments contained in the defendants'
 14 briefs.¹

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 17 DATED: 3/6/06

 /s/ Ronald M. Whyte
 RONALD M. WHYTE
 United States District Judge

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 27 ¹ The court also notes that the time periods specified in Civil L.R. 7-2(a), 7-3(a), (c) are
 28 minimum time periods. It would be helpful in a case of this nature if the parties agreed to longer
 such periods of time for any complex motions.

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16 Counsel are responsible for distributing copies of this document to co-counsel that have not
17 registered for e-filing under the court's CM/ECF program.

18 **Dated:** 3/6/2006

19 /s/ JH
20 **Chambers of Judge Whyte**